No. 05-416

Supreme Court, U.S.
FILED
DEC 29 2005
OFFICE OF THE CLERK

In The
Supreme Court of the United States

JEANNE S. WOODFORD
and ANTHONY P. KANE,

Petitioners,

v.

VIET MIKE NGO,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

BILL LOCKYER
Attorney General of the
State of California
JAMES M. HUMES
Chief Assistant Attorney General
MANUEL M. MADEIROS
State Solicitor General
FRANCES T. GRUNDER
Senior Assistant Attorney General
THOMAS S. PATTERSON
Supervising Deputy
Attorney General
JENNIFER G. PERKELL
Deputy Attorney General
Counsel of Record
State Bar No. 203205
455 Golden Gate Avenue,
Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5726
Fax: (415) 703-5843

Counsel for Petitioners

MEIR FEDER
Counsel of Record
JONES DAY
222 East 41st St.
New York, NY 10024
Telephone: (212) 326-7870
Fax: (212) 755-7306

Counsel for Respondent

Petition For Certiorari Filed September 29, 2005
Certiorari Granted November 14, 2005

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Plaintiff's Complaint, United States District Court for the Northern District of California, San Jose Division, filed July 18, 2001 2

Plaintiff's Opposition to Defendant's Motion to Dismiss, United States District Court for the Northern District of California, San Jose Division, filed February 19, 2003 15

Declaration of Viet Mike Ngo in Support of Plaintiff's Opposition to Motion to Dismiss, United States District Court for the Northern District of California, San Jose Division, filed April 8, 2003 21

Actual Copies of Plaintiff's Two Inmate Appeals (Exhibit A to Declaration of Viet Mike Ngo in Support of Plaintiff's Opposition to Motion to Dismiss) 38

Notice of Appeal, United States District Court for the Northern District Of California, San Jose Division, filed May 29, 2003 43

TABLE OF CONTENTS – Continued

Page

The following Opinion and Orders were printed in the Petition for a Writ of Certiorari and are not reproduced in this Joint Appendix. They can be found at the following pages:

Order Granting Defendants' Motion to Dismiss, United States District Court for the Northern District of California, Filed May 5, 2003 .....App. 22

Opinion, United States Court of Appeals for the Ninth Circuit, Filed March 24, 2005.....App. 1

Order Denying Rehearing, United States Court of Appeals for the Ninth Circuit, Filed July 1, 2005 .....App. 27

RELEVANT DOCKET ENTRIES

United States District Court
For the Northern District of California
San Jose Division

Doc.	Proceeding
1	Plaintiff's complaint, filed July 18, 2001
13	Plaintiff's opposition to motion to dismiss, filed February 19, 2003
14	Declaration of Plaintiff Viet Mike Ngo in support of opposition to motion to dismiss, filed April 8, 2003
15	Order granting Defendants' motion to dismiss, filed May 5, 2003
16	Notice of appeal, filed May 29, 2003

United States Court of Appeals
for the Ninth Circuit

March 24, 2005 – opinion and judgment filed

July 1, 2005 – order denying rehearing filed

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name Ngo Viet M.
(Last) (First) (Middle)

Prisoner Number E-21895

Institutional Address San Quentin State Prison,
San Quentin, CA 94974

==========

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Viet Mike Ngo
(Enter the full name of the plaintiff in this action)

vs.

J.S. Woodford, A.P. Kane; et al.

(Enter the full name of the defendant(s) in this action)

Case No. C 01-20674
(To be provided by the clerk of court)

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

(Filed Jul. 18, 01)

(XX) DEMAND FOR JURY TRIAL

(___) NO JURY TRIAL DEMAND
(Check one only)

All questions on this complaint form must be answered in order for your action to proceed.

I. Exhaustion of Administrative Remedies

Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

A. Place of present confinement San Quentin State Prison

B. Is there a grievance procedure in this institution?
YES (XX) NO ( )

C. Did you present the facts in your complaint for review through the grievance procedure?
YES (XX) NO ( )

D If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Two appeals submitted, San Quentin Appeals Office refused to process claiming time constraints for filing not being met. However, my rights are still being denied on an ongoing basis.

2. First formal level See above.

3. Second formal level See above.

4. Third formal level See above.

E. Is the last level to which you appealed the highest level of appeal available to you?
YES (XX) NO ( )

F. If you did not present your claim for review through the grievance procedure, explain why. N/A

CLAIM I

II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Viet Mike Ngo, San Quentin State Prison, San Quentin, CA 94974

Write the full name of each defendant, his or her official position, and his or her place of employment.

B. J.S. Woodford, Warden; A.P. Kane, Chief Deputy Warden; J. Rubia, Correctional Captain; H. Hammond, Correctional Counselor II; B.J. Carlile, Correctional Lieutenant; I.A. Nienhuis, Correctional Lieutenant. All defendants are members of the Unit Classification Committee, except the Warden, who is their superior. San Quentin State Prison, San Quentin, CA 94974.

CLAIM I

III. Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

I am a 31 year-old Vietnamese American serving a life term (Second Degree) for murder. I have been a life long practicing Catholic.

I have been restricted and have had obstacles placed in the practice of my faith, Catholicism, by Mr. A.P. Kane, Chief Deputy Superintendent at San Quentin Prison.

Specifically, on October 26, 2000, I was placed in Administrative Segregation for "inappropriate activity." I was not issued a disciplinary report and was never found guilty of any Rules violation.

I was released to the mainline on 12-23-00 but was explicitly restricted by Mr. Kane from participating in any "special programs" at a classification committee the day

before, 12-22-00. Special programs at San Quentin include evening fellowship and study sessions including:

a. Centering Prayer

b. Teachings of the Catholic Church

c. Meditation/prayer sessions

d. Holy Week Services including Stations of the Cross and Foot-washing

e. Catechism classes

f. Vietnamese language Bible study

g. Choir practice

h. Seasonal worship

i. Personal Counseling

j. Confession

k. Monthly Taize/prayer/meditation service

l. Kairos

I regularly participated in these and other Catholic Church programs before Mr. Kane restricted me from all Catholic Church activities except for Sunday Mass.

I was barred from attending Holy Week Services which included critical observances of the Catholic faith – foot-washing and Stations of the Cross.

I have been prohibited from attending Vietnamese language Bible study and participating in fellowship with Vietnamese monks and nuns. I can not* attend Taize and Kairos prayer and fellowship services and other worship services integral to the Catholic faith.

---

* Any typographical and/or incorrect punctuation found in the following Joint Appendix pages was intentionally left to show accurately how the original documents appeared.

The investigation of the alleged "inappropriate activity" for which I had been placed in segregation was conducted by Lieutenant B. Carlile. Lt. Carlile wrote that the allegations "could not be confirmed or established in this investigation." Yet I am being denied the right to participate in the practice and worship that my faith requires. The exclusion placed on me by Mr. Kane applies to a wide variety of programs and is a severe impediment to my religious freedom. The restrictions are not legitimately related to any bona fide security issue or any wrongdoing on my part. I emphasize that I was never charged nor found guilty of any violation that would justify these restrictions on my religious freedom.

CLAIM II

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Two appeals submitted. San Quentin Appeals Office refused to process claiming time constraints for filing not being met. However, my rights are still being denied on an ongoing basis.

2. First formal level See above.

3. Second formal level See above.

4. Third formal level See above.

E. Is the last level to which you appealed the highest level of appeal available to you?
YES (XX) NO ( )

F. If you did not present your claim for review through the grievance procedure, explain why.
N/A

CLAIM II

II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Viet Mike Ngo, San Quentin State Prison, San Quentin, CA 94974

Write the full name of each defendant, his or her official position, and his or her place of employment.

B. J.S. Woodford, Warden; A.P. Kane, Chief Deputy Warden; J. Rubia, Correctional Captain; H. Hammond, Correctional Counselor II; B.J. Carlile, Correctional Lieutenant; I.A. Nienhuis, Correctional Lieutenant. All defendants are members of the Unit Classification Committee, except the Warden, who is their superior. San Quentin State Prison, San Quentin, CA 94974.

III. Statement of the Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

My right to free speech and expression has been violated by Mr. A.P. Kane, Chief Deputy Superintendent at San Quentin Prison. Specifically, my right to correspond with, visit with, and telephone Kourtney Hallum, a former volunteer in the San Quentin Catholic Chapel, have been denied by Mr. Kane who has threatened me with transfer if I write, call, or receive visits from her. The California Code of Regulations (Title 15) Section 3020, specifically states that: "Inmate

participation in an approved activity group will not be cause to deny or restrict regular correspondence and visitation with persons who are approved to attend and participate in such inmate group activities."

On 12/22/00, I was threatened at my monthly Administrative Segregation committee hearing by CCII H. Hammond and Correctional Captain J. Rubia, not to call or write Miss Hallum. Mr. Kane was present and chaired this committee. On 12/22/00, Mr. Kane told me my writing to Miss. Hallum "violates security and safety of the institution." Mr. Kane also threatened to transfer me if I attended any evening activities that had outside volunteers such as college classes, Alternatives to Violence, SQUIRES, or Church with the exception of Sunday Mass. Miss Hallum was never charged with wrongdoing while a volunteer at San Quentin and I never was issued a Rules Violation Report or found guilty of any wrongdoing that would justify the restrictions imposed on me. My right to freely communicate and express ideas and opinions has been denied by Mr. Kane.

CLAIM III

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Two appeals submitted. San Quentin Appeals Office refused to process claiming time constraints for filing not being met. However, my rights are still being denied on an ongoing basis.

2. First formal level See above.

3. Second formal level See above.

4. Third formal level See above.

E. Is the last level to which you appealed the highest level of appeal available to you?
YES (XX) NO ( )

F. If you did not present your claim for review through the grievance procedure, explain why. N/A

CLAIM III

II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Viet Mike Ngo, San Quentin State Prison, San Quentin, CA 94974

Write the full name of each defendant, his or her official position, and his or her place of employment.

B. J.S. Woodford, Warden; A.P. Kane, Chief Deputy Warden; J. Rubia, Correctional Captain; H. Hammond, Correctional Counselor II; B.J. Carlile, Correctional Lieutenant; I.A. Nienhuis, Correctional Lieutenant. All defendants are members of the Unit Classification Committee, except the Warden, who is their superior. San Quentin State Prison, San Quentin, CA 94974.

III. Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

My right and expectation of parole has been violated and abridged by Mr. A.P. Kane, Chief Deputy Superintendent at San Quentin Prison, who has denied me the right to participate in "Special Programs" at San Quentin Prison. "Special Programs" includes college courses, self-help groups including Alternatives to Violence and other religious, educational, musical and volunteer groups that the Board of Prison Terms recommends and often requires of lifers so that they can be found suitable for parole.

My inability to participate in these and other programs upon threat of transfer means I can not upgrade myself educationally or obtain the experiences and documentation that would enable me to be found suitable for parole.

My liberty interest in parole has been denied by Mr. Kane.

I have been denied the same rights other lifers have to participate in programs so that they can receive parole dates. This right has been taken from me without due process or any wrongdoing on my part.

CLAIM IV

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Two appeals submitted. San Quentin Appeals Office refused to process claiming time constraints for filing not being met. However, my rights are still being denied on an ongoing basis.

2. First formal level See above.

3. Second formal level See above.

4. Third formal level See above.

E. Is the last level to which you appealed the highest level of appeal available to you?
YES (XX) NO ( )

F. If you did not present your claim for review through the grievance procedure, explain why. N/A

CLAIM IV

II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Viet Mike Ngo, San Quentin State Prison, San Quentin, CA 94974

Write the full name of each defendant, his or her official position, and his or her place of employment.

B. J.S. Woodford, Warden; A.P. Kane, Chief Deputy Warden; J. Rubia, Correctional Captain; H. Hammond, Correctional Counselor II; B.J. Carlile, Correctional Lieutenant; I.A. Nienhuis, Correctional Lieutenant. All defendants are members of the Unit Classification Committee, except the Warden, who is their superior. San Quentin State Prison, San Quentin, CA 94974.

III. Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than

one claim, each claim should be set forth in a separate numbered paragraph.

I have been defamed and had my right to privacy violated by A.P. Kane, Chief Deputy Superintendent at San Quentin Prison, and by B.J. Carlile, Correctional Lieutenant at San Quentin Prison. Mr. Kane and Lt. Carlile acted both unreasonably and in violation of state law in publicizing an uncorroborated and unsubstantiated allegation that I had "engaged in sexual relationships with Catholic volunteer priests."

The shocking and scurrilous nature of this charge has damaged me emotionally and hurt my reputation. This charge was improperly disclosed to other inmates in a memorandum and to free volunteers who come to the prison. It was improperly publicized in violation of state confidentiality laws to my detriment. The allegation was based on confidential sources whose reliability was not tested, not established according to procedures set forth in state law. The charge was publicized in violation of State Law confidentiality rules.

IV. Relief

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

1.) An order restraining A.P. Kane and San Quentin from denying me the right to participate in special programs, including evening religious, educational, musical, and self-help programs.

2.) An order restraining A.P. Kane and San Quentin from denying me the right to correspond, visit, or phone Miss K. Hallum.

3.) Removal from my central file of all reports relating to the unproved allegations of sexual misconduct and over-familiarity with volunteers.

4.) Compensatory and punitive damages in an amount to be determined at trial for defamation, denial of my religious rights, First Amendment rights, and liberty interest in parole.

5.) An order restraining A.P. Kane and San Quentin from retaliating transfer or other actions against me.

6.) Further equitable relief as the court deems proper.

7.) Appointment of counsel, especially to represent my claim of denial of religious freedom.

DATED: 7-11-01 /s/ Viet M. Ngo
(Plaintiff's signature)

VERIFICATION
(optional)

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

DATED: 7-11-01 /s/ Viet M. Ngo
(Plaintiff's signature)

JURY TRIAL DEMAND
(optional)

I demand a jury trial for all claims for which a jury trial is allowed.

YES (X) NO ( ) (check one only)

DATED: 7-11-01

/s/ Viet M. Ngo
(Plaintiff's signature)

VIET MIKE NGO
E-21895
Avenal State Prison
P.O. BOX 8
Avenal, CA. 93204
In Pro Per

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CASE NO. C 01-20674 JF

VIET M. NGO,

Plaintiff,

v.

J.S. WOODFORD
A. P. KANE,

Defendants.

PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b) AND 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE

(Filed Feb. 19, 2003)

TO: J.S. WOODFORD, ET. AL., DEFEDNDANTS

PLEASE TAKE NOTICE that Plaintiff Viet Mike Ngo hereby moves this Court for an order allowing this action to proceed on the grounds that Plaintiff has exhausted his available administrative remedies; has established supervisory liability under ß1983 and has stated a claim against each of the defendants.

This motion is based upon this motion, the points and authorities cited in support thereof, the declaration attached hereto and the Court's file in this action.

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Defendants urge dismissal of the complaint because plaintiff has failed to exhaust his administrative remedies.

Plaintiff notes that defendants have not proved that plaintiff failed to exhaust his administrative remedies.

There are disputed issues of fact regarding efforts plaintiff has made to exhaust his claims.

Defednants cite the language in **BOOTH v Churner 532 US 731, 121 S. Ct. 1819, 149 L. Ed. 2d. 958 (2001)** and urge that the exhaustion requirement contained in the PLRA is mandatory.

In Brady v. Attygala 196 F. Supp 2d 1016, 1020 (C.D. CA 2002) the Court discussed the exhaustion requirement in Booth.

"In the course of reaching its conclusion the court noted that it would "not read futility or other exceptions" into section 1997e(a)'s exhaustion requirement. Id., at 182 n.6. The court went on to hold that "an inmate must exhaust irrespective of the form of relief sought and offered through administrative avenues." Id. It is these statements in the Court's opinion that defendants argue require an inmate to continue to appeal his grievance even after winning at a lower level in the administrative process. The problem is that these statements say nothing about **when** an inmate is considered to have actually exhausted his administrative remedies.

Instead, these statements merely indicate that an inmate must exhaust his remedies regardless of the relief he seeks or the relief offered by the prison grievance system. See id.

1823 (explaining that the phrase "such administrative remedies as are available" requires an inmate to exhaust whatever grievance procedures are available, "whether or not the possible responses cover the specific relief the prisoner demands" in his federal complaint). One must look to another section of the Court's opinion for an answer to the question **when** an inmate is considered to have exhausted his remedies:

The Court noted at the outset of its opinion that its analysis was premised upon the assumption "that some redress for a wrong is presupposed by the statute's requirement of an 'available" 'remedy.'" Id. at 1822. So long as there exists a "possibility of some relief for the action complained of," an available remedy still exists for the inmate to exhaust. Id. 1824. To the Court it is the possibility of relief that is critical in determining **when** an inmate has exhausted his administrative remedies. "Without the possibility of some relief, the administrative officers would presumably have no authority to act on the subject of the complaint, leaving the inmate with nothing to exhaust." Id. at 1822 n. 4. Further pursuit of an administrative appeal is therefore not required when no relief whatsoever is available for the inmate to obtain through the prison administrative process. At that point, the inmate has "nothing °leftN to exhaust." Id."

Although **BRADY** dealt with an administrative appeal that had been granted but not exhausted, the holding applies to the instant case.

Here petitioner submitted administrative appeals on each of the issues that is the subject of his federal claims.

The San Quentin Appeals Coordinator refused to process the appeals and screened the out.

The Appeals Coordinator will not accept appeals of screening decisions.

It is impossible to submit an appeal to the **next** level when the appeal is rejected for processing at the first instance.

Petitioner is now on out to court status in administrative segregation in San Quentin's Carson Unit. His legal property is stored in the Avenal State Prison Law Library. (See Declaration of Plaintiff Viet Mike Ngo)

Plaintiff asks this Court for 50 days from his return to Avenal State Prison to submit documentary evidence of his efforts to submit administrative appeals on the issued raised in his complaint and to show how they were rejected for processing.

There are no more levels of review available under the administrative processing of appeals at San Quentin once an appeal is rejected for processing at the First Level.

Plaintiff was denied his rights under Title 15 ß3084.1 Right to Appeal. Now Defendants raise this as grounds to dismiss his Complaint.

Defendants acknowledge that "ß1997e(a) creates a defense – defendants have the burden of raising and proving exhaustion."

WYATT v. HUBBARD 2003 DJDAR 106, 109

Plaintiff submitted two appeals on each of the claims raised in his complaint. The Appeals Coordinator refused to prcoess those appeals claiming time constraints were not me. However, the denial of my right to attend religious services was an ongoing violation and my appeal was filed while my rights were being violated.

Similarly, my appeals on the other claims were filed while those rights were being violated. My appeals were rejected.

B PLAINTIFF HAS STATED A CLAIM AGAINST DEFENDANT WOODFORD

Federal Rule of Civil Procedure 8(f) requires that all pleading shall be construed to do substantial justice.

Federal Rule of Civil Procedure 15(a) states that leave to amend pleadings shall be freely given when justice so requires.

Plaintiff requests leave to amend his complaint to include an allegation that Warden Woodford had direct knowledge through reports and conversations of the actions taken to restrict plaintiff's religious freedom and First Amendment Rights and approved and acquiesced in those actions.

C. PLAINTIFF'S CLAIMS FOR INJUNCTIVE RELIEF ARE NOT MOOT

Plaintiff claims that he was transferred from San Quentin in retaliation for the lawful exercise of his First Amendment Rights and for bringing this action and an active writ in Marin County Superior Court charging San Quentin Warden with practicing illegal racial segregation in housing and discipline.

Plaintiff is **now** in San Quentin and will seek a Court order for his return to San Quentin. Accordingly injucntive relief is not moot since it is likely that Plaintiff will return to San Quentin.

D. PLAINTIFF ASKS FOR AN ORDER THAT NAMED DEFEDNANTS WHO CLAIMED THEY WERE UNSERVED WAIVE OF SERRVICE AND SUMMONS

Plaintiff alleges that all named defednants to this lawsuit were served. Due to his current placement in Ad Seg, plaintiff cannot contact the individuals who arranged for service of the summons and complaint.

Nonetheless, plaintiff asks counsel for defendants for a request for waiver of service of the summons to save the costs of service of summons and an additional copy of the complaint in this lawsuit.

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in sacing unnecessary costs of service of the summons and complaint.

Plaintiff is incarcerated and proceeding in pro per and asks this Court for an order waiving service of the summons and complaint on the other defendants named in his complaint.

CONCLUSION

Plaintiff respectfully asks this Court to allow this action to proceed and to allow leave to file an amended complaint with allegations supporting defendant Woodford's liability. Plaintiff also asks for an order granting him 50 days from the date of his return to Avenal State prison in which

to file supporting documentary evidence of his efforts to exhaust the claims presented in this suit.

Respectfully Submitted Date: 2/12/03
/s/ V. M. Ngo
VIET MIKE NGO
In Pro Per

DECLARATION OF VIET MIKE NGO

I, VIET MIKE NGO DECLARE AS FOLLOWS:

1. I am the plaintiff in this matter.

2. I am housed at Avenal State Prison but was transferred back to San Quentin Prison on February 4, 2003 for a Court appearance in Marin County Superior Court n a petition for writ of Habeas before Judge V. Adams.

3. I do not know the date when I will be returned to Avenal State Prison.

4. My legal property including materials relating to this action are stored at the Avenal State Prison Law Library.

5. I made two efforts to exhaust each of the claims presented in this action.

6. A process server was hired to serve each of the named defendants in this action with a summons and complaint.

6. I am now housed in administrative segregation, Carson Section at San Quentin and cannot obtain verification that all defendants were served.

7. When I am returned to Avenal State Prison I will again be on orientation status with no immediate access to the law library. Accordingly I request 50 days from the

date of my return in which to retrieve and asseemble documentary support that I exhausted available administrative remedies.

8. The request is not made to delay prosecution of this action or for any improper motive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of February, 2003 at San Quentin, CA, County of Marin.

/s/ V. M. Ngo
VIET MIKE NGO
In Pro Per

[Declaration Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIET MIKE NGO, Plaintiff, v. J.S. WOODFORD, et al., Defendants.	)	CASE NO. C 01-20674 (JF)

DECLARATION OF VIET MIKE NGO

(Filed Apr. 8, 2003)

I, Viet Mike Ngo, declare as follows:

1. I am the plaintiff in this matter: case # C 01-20674

2. I filed a motion in opposition to defendants' motion to dismiss on 2-19-03 where I notified the court that I would be filing supporting documentary evidence to show that I exhausted the claims presented in this suit. I also requested 50 days to accomplish this after returning to Avenal State Prison.

3. Attached as exhibit A to this declaration are copies of my rejected 602s from the Appeals Office of San Quentin State Prison regarding the claims presented in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

and that this declaration was executed on April 3, 2003, at Avenal State Prison.

/s/ V. M. Ngo
Viet Mike Ngo
In Pro Per

EXHIBIT A

INMATE/PAROLEE APPEALS SCREENING FORM

Name Ngo Number E21895 SQP/LOG No._____
(Other Log No) _____ Issue: _____ Area of Origin: _____
Housing Unit _____ Note _____

YOUR APPEAL IS BEING RETURNED TO YOU FOR THE FOLLOWING REASON(S):

___ 1. The action or decision being appealed is not within the jurisdiction of the Department.
- ___ a. **BPT Issue**, file **BPT 1040 form** & submit to **C&PR**
- ___ b. Other, see comments

___ 2. You have submitted a duplicate appeal on the same issue. Check one:
- ___ Your first appeal was screened out on _____ for _____
- ___ Your appeal is currently under review at the _____ level.
- ___ Your first appeal has been completed at the _____ level.

___ 3. You are appealing an action not yet taken.

___ 4. You may not submit an appeal on behalf of another inmate.

___ 5. You have not adequately completed the Inmate/ Parolee Form (CDC 602) or attached the proper documents.

___ CDC-115 Hearing Officer's or Disciplinary Committee Results.
___ CDC-115A with I.E./D.A. info.
___ CDC-128G ICC/UCC Clas. Com.
___ Lab Results Sheet
___ CDC-7219 Medical Report
___ Board of Control Claim Form (attached)
___ Receipts: ___ Qtr. Pkg. Inventory Slip
___ You have failed to complete Section ___
___ CDC-128B1 Hearing Notif.
___ CDC-128G Init. Clas. Com.
___ CDC-114D Lock Up Order
___ Legal Status Summary
___ CDC-143 Property Transfer Slip
___ Supplemental Reports to CDC-115.
___ CDC-839/840 Class/Reclass Score Sheet
___ CDC-128G CSR Endorsement Chrono
___ CDC-1030 Confidential Disclosure
___ CDC-128C Medical Chrono
___ Property Inventory Slip
___ Cell Search Slip
___ Sign & Date Section _____
___ Other: _____

X 6. There has been too great a time lapse between when the action or decision occurred and when you filed your appeal.

___ 7. This issue has been appealed under the assigned SQP Appeal Log No. _____. Per DOM section 54100.10.1, a copy of the reviewer's response:
___ Is attached
___ Will be forwarded to you upon completion

___ 8. Abuse of the Appeal Procedure. See Comments.

Comments: Pursuant to CCR 3084.6(c) your appeal is rejected. Issues transpired last year 10-26-00 & 12-23-00

/s/ Chandler-Dacanay /s/ A.A. Read CCII Date Jun 19 2001

R. Chandler-Dacanay
CC-II, Appeals Coordinator

A.A. Read
CC-II, Appeals Coordinator

This screening action may not be appealed unless you allege that the above reason is inaccurate. In such case, please return this form to the Appeals Coordinator with the necessary information.

PERMANENT APPEAL
ATTACHEMENT - DO NOT REMOVE

State of California **Department of Corrections**

Inmate/Parolee
Appeal Form
CDC 602 (12/87)

Location:

Institution/Parole Region	**Log No.**	**Category**
1. _____	1. _____	_____
2. _____	2. _____	

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may

send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

Name	Number	Assignment	Unit/Room Number
NGO, Viet	E-21895	Badger Section Clerk	5N77L

A. Describe Problem: On 10/26/00, I was placed in Administrative Segregation on an allegation of engaging in "inappropriate activity." On 12/23/00 I was released from Ad Seg. I was never served with a Rules Violation Report or presented with any specific charge of wrong doing so I could defend myself against the charge. On 12/23/00 I was threatened by CCII Hammond and Corr. Captain Rubia not to call or write to Ms. Hallum, a volunteer in the Catholic Chapel.

[If you need more space, attach one additional sheet.]

On 12/23/00. A.P. Kane told me that my writing to Ms. Hallum "violates security and trust." Mr. Kane threatened me with immediate transfer if I wrote or called Ms. Hallum. Mr. Kane also threatened to transfer me if I attended any evening activities like education, Alternatives to Violence, and church. Mr. Kane stated I could not have a personal relationship with a volunteer.

My rights under CCR 3020 were violated in that I am being prohibited from corresponding or visiting with a "person approved to attend and participate in such inmate group activities."

My rights to Due Process under CCR 3336 were violated because I was not informed of a specific charge or reason for being placed in Ad Seg. I was not afforded a staff assistant to assist me even though I could not defend the vague and unspecific charge of "inappropriate activity on my own.

I am being denied privileges without any finding of wrongdoing and being denied the right by Mr. Kane to attend evening education, self-help, music and chapel programs.

In violation of CCR3321 I was not given any confidential source disclosure forms or material in compliance with CCR 3321(b)(3).

B. Action Requested:

1. I want a copy of all restrictions placed on my participation in programs here at San Quentin.

2. I want all restrictions on my participation in programming placed on me by Mr. Kane or anyone under his authority to be removed.

3. I want all mail, phone, visiting restrictions with Ms. Hallum removed.

4. Per CC II Hammond my mail is being "flagged". I request written notice that this practice has ceased.

5. I want return of my seized correspondence and addressbook so I can exercise my right to correspond and phone family and friends.

6. I want a copy of any and all findings or results or investigations of myself relating to my placement in Ad Seg.

7. I want removal of any adverse chronos, reports, memoranda placed in my Central file relating to my placement in Ad Seg.

Inmate/Parolee Signature: /s/ V. M. Ngo

Date Submitted: 6/18/01

C. Informal Level (Date Received: _____)

Staff Response: _____

_____

_____

_____

Staff Signature: _____ Date Returned to Inmate: _____

D. Formal Level

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response. _____

_____

_____

_____

_____

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

_____

3-20-01

To: Mr. A. P. Kane
Chief Deputy Superintendent
San Quentin State Prison

From: Viet Mike Ngo
E-21895
5-N-77L

Because you warned me not to do any special programs and I was told not to write or call Miss Hallum and you will check up on me – I ask to play baseball on the San Quentin team. Thank you. Since my reclassification on 12/23 to A1 status, am I now entitled to participate in any and all special programs?

State of California
Department of Corrections

MEMORANDUM

Date: April 13, 2001

To: Inmate Ngo E-21895

From: **Department of Corrections, California State Prison, San Quentin, CA 94964**

Subject: **RECREATIONAL PROGRAMS**

I have received your letter expressing your desire to participate in the programs we offer here at San Quentin. You may participate in any recreational programs.

I have authorized I. Nienhuis, Community Resources Manager, to review your request to participate in any other program.

If you should have any questions or require additional information, you may direct your questions Mr. I Nienhuis, Community Resource Manager.

/s/ A.P. Kane
A. P. Kane
Chief Deputy Warden

INMATE/PAROLEE APPEALS SCREENING FORM

Name Ngo Number E21895 SQP/LOG No.: _____

(Other Log No) _____ Issue _____ Area of Origin: _____

Housing Unit 5 N 77L Note _____

YOUR APPEAL IS BEING RETURNED TO YOU FOR THE FOLLOWING REASON(S):

___ 1. The action or decision being appealed is not within the jurisdiction of the Department.
   a. **BPT Issue**, file **BPT 1040 form** & submit to **C&PR**
   ___
   ___ b. Other, see comments

___ 2. You have submitted a duplicate appeal on the same issue. Check one:
   ___ Your first appeal was screened out on _____ for _____
   ___ Your appeal is currently under review at the _____ level.
   ___ Your first appeal has been completed at the _____ level.

___ 3. You are appealing an action not yet taken.

___ 4. You may not submit an appeal on behalf of another inmate.

___ 5. You have not adequately completed the Inmate/Parolee Form (CDC 602) or attached the proper documents.

- ___ CDC-115 Hearing Officer's or Disciplinary Committee Results.
- ___ CDC-115A with I.E./D.A. info.
- ___ CDC-128G ICC/UCC Clas. Com.
- ___ Lab Results Sheet
- ___ CDC-7219 Medical Report
- ___ Board of Control Claim Form (attached)
- ___ Receipts: ___ Qtr. Pkg. Inventory Slip
- ___ You have failed to complete Section ___
- ___ CDC-128B1 Hearing Notif.
- ___ CDC-128G Init. Clas. Com.
- ___ CDC-114D Lock Up Order
- ___ Legal Status Summary
- ___ CDC-143 Property Transfer Slip
- ___ Supplemental Reports to CDC-115
- ___ CDC-839/840 Class/Reclass Score Sheet
- ___ CDC-128G CSR Endorsement Chrono
- ___ CDC-1030 Confidential Disclosure
- ___ CDC-128C Medical Chrono
- ___ Property Inventory Slip
- ___ Cell Search Slip
- ___ Sign & Date Section _____
- ___ Other: _____

___ 6. There has been too great a time lapse between when the action or decision occurred and when you filed your appeal.

___ 7. This issue has been appealed under the assigned SQP Appeal Log No. _____. Per DOM section 54100.10.1, a copy of the reviewer's response:

___ Is attached
___ Will be forwarded to you upon completion

___ 8. Abuse of the Appeal Procedure. See Comments.

Comments: Although the exclusion from special programs is on going it started back in 2000 and you waited 6 months before addressing this issue. Per CCR 3084.6(c) your appeal is rejected.

/s/ Chandler-Dacanay /s/ A.A. Read CCII Date Jun 26 2001
R. Chandler-Dacanay A.A. Read
CC-II, Appeals Coordinator CC-II, Appeals Coordinator

This screening action may not be appealed unless you allege that the above reason is inaccurate. In such case, please return this form to the Appeals Coordinator with the necessary information.

PERMANENT APPEAL
ATTACHEMENT - DO NOT REMOVE

State of California **Department of Corrections**

Inmate/Parolee
Appeal Form
CDC 602 (12/87)

Location: Institution/ Parole Region	**Log No.**	**Category**
1. _____	1. _____	_____
2. _____	2. _____	

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and

classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

Name	Number	Assignment	Unit/Room Number
NGO	E-21895	Clerk	5-N-77L

A. Describe Problem: This appeal is brought pursuant to CCR 3084.1 (Right to Appeal) which gives me the right to "appeal any departmental decision, action, condition, or policy . . ." having an adverse effect upon (my) welfare." The attached appeal concerning my exclusion from special programs and other related issues was rejected as not being timely. My exclusion from special programs is an ongoing action and as such, 3084.6 appeal time limit, does not apply. I can't attend 6:20 movement today or tomorrow – so my appeal is timely.

[If you need more space, attach one additional sheet.]

Further, I attempted informal resolution of this issue by writing to Mr. A.P. Kane on 3-20-01 – see attached. His response indicates the issue is still open and now I am exercising my right to appeal.

B. Action Requested:

1. Processing of my appeal.

2. A statement indicating my appeal will not be processed (if you still choose to reject my appeal) and my administrative remedies are exhausted.

Inmate/Parolee Signature: /s/ V. M. Ngo

Date Submitted: 6/25/01

C. Informal Level (Date Received: _____)

Staff Response: _____

_____

_____

_____

Staff Signature: _____ Date Returned to Inmate: _____

D. Formal Level

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response. _____

_____

_____

_____

_____

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

First Level ☐ Granted ☐ P. Granted ☐ Denied
☐ Other _____

E. Reviewer's Action (Complete within 15 working days):
Date assigned: _____ Due Date: _____

Interviewed by: _____

_____

_____

_____

_____

_____

_____

Staff Signature: _____ Title: _____ Date Completed: _____

Division Head Approved:
Signature: _____

Returned
Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

_____

_____

_____

_____

Signature: _____ Date Submitted: _____

Second Level ☐ Granted ☐ P. Granted ☐ Denied
☐ Other _____

G. Reviewer's Action (Complete within 10 working days):
Date assigned: _____ Due Date: _____

☐ See Attached Letter

Signature: _____ Date Completed: _____
Warden/Superintendent Date Returned
Signature: _____ to Inmate _____

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

_____

_____

_____

_____

_____

_____

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to:

Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

Director's Action: ☐ Granted ☐ P. Granted
☐ Denied ☐ Other _____

☐ See Attached Letter

Date: _____

[Declaration Of Service Omitted In Printing]

STATE OF CALIFORNIA

INMATE/PAROLEE APPEAL FORM

CDC 602 (12/87)

DEPARTMENT OF CORRECTIONS

Location: Institution/Parole Region | Log No. | Category

1. _____ 1. _____

2. _____ 2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
NGO, Viet	E-21895	Badger Section Clerk	5W77

A. Describe Problem:

On 10/26/00 ,I was placed in Administrative Segregation on an allegation of engaging in "inappropriate activity." On 12/21/00 I was released from Ad Seg. I was never served with a Rules Violation Report or presented with any specific charge of wrong doing so I could defend myself against the charge. On 12/21/00 I was threatened by CCII Hammond and Corr. Captain Rubia not to call or write to Ms. Hallum, a volunteer in the Catholic Chapel.

CONTINUED ON ATTACHED PAGE

If you need more space, attach one additional sheet.

B. Action Requested:

SEE ATTACHED

Inmate/Parolee Signature: _____ Date Submitted: JUN 18 2001 6/18/01

C. INFORMAL LEVEL (Date Received: _____)

Staff Response:

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

6 19 #4

BEST AVAILABLE COPY

CONTINUATION OF INMATE APPEAL/NGO,Viet E-21895

On 12/23/00. A.P. Kane told me that my writing to Ms. Hallum "violates security and trust." Mr. Kane threatened me with immediate transfer if I wrote or called Ms. Hallum.
Mr. Kane also threatened to transfer me if I attended any evening activities like education, Alternatives to Violence, and church. Mr. Kane stated I could not have a personal relationship with a volunteer.

My rights under CCR 3020 were violated in that I am being prohibited from corresponding or visiting with a "person approved to attend and participate in such inmate group activities."

My rights to Due Process under CCR 3336 were violated because I was not informed of a specific charge or reason for being placed in Ad Seg. I was not afforded a staff assistant to assist me even though I could not defend the vague and unspecific charge of "inappropriate activity on my own.

I am being denied privileges without any finding of wrongdoing and being denied the right by Mr. Kane to attend evening education, self-help, music and chapel programs.

In violation of CCR3321 I was not given any confidential source disclosure forms or material in compliance with CCR 3321(b)(3).

ACTION REQUESTED:
1. I want a copy of all restrictions placed on my participation in programs here at San Quentin.

2. I want all restrictions on my participation in programming placed on me by Mr. Kane or anyone under his authority to be removed.

3. I want all mail, phone, visiting restrictions with Ms. Hallum removed.
4. Per CC II Hammond my mail is being "flagged". I request written notice that this practice has ceased.

5. I want return of my seized correspondence and addressbook so I can exercise my right to correspond and phone family and friends.

6. I want a copy of any and all findings or results or investigations of myself relating to my placement in Ad Seg.

7. I want removal of any adverse chronos, reports, memoranda placed in my Central file relating to my placement in Ad Seg.

6/18/01

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE APPEAL FORM

CDC 602 (12/87)

Location: Institution/Parole Region: 1. _____ 2. _____

Log No.: 1. _____ 2. _____

Category: _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Ngo	E-21895	Clerk	5-N-77L

A. Describe Problem: This appeal is brought pursuant to CCR 3084.1 (Right to Appeal) which gives me the right to "appeal any departmental decision, action, condition, or policy..." having an adverse effect upon (my) welfare." The attached appeal concerning my exclusion from special programs and other related issues was rejected as not being timely. My exclusion from special programs is an ongoing action and as such, 3084.6 appeal time limit, does not apply. I can't attend 6:20 movement today or tomorrow--so my appeal is timely.

See attached.

If you need more space, attach one additional sheet.

B. Action Requested: See attached.

Inmate/Parolee Signature: _____ Date Submitted: 6/25/01

JUN 25 2001

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

40

First Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____

Staff Signature: _____ Title: _____ Date Completed: _____

Division Head Approved: Returned

Signature: _____ Title: _____ Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Second Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____ Due Date: _____

☐ See Attached Letter

Signature: _____ Date Completed: _____

Warden/Superintendent Signature: _____ Date Returned to Inmate: _____

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

☐ See Attached Letter

Date: _____

CDC 602 (12/87)

Further, I attempted informal resolution of this issue by writing to Mr. A.P. Kane on 3-20-01-see attached. His response indicates the issue is still open and now I am exercising my right to appeal.

Action requested:

1. Processing of my appeal.
2. A statement indicating my appeal will not be processed (if you still choose to reject my appeal) and my administrative remedies are exhausted.

6/25/01

Viet Mike Ngo
E-21895
Avenal State Prison
P.O. Box 8
Avenal, Calif. 93204
In Pro Per

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIET MIKE NGO, Plaintiff, v. J.S. WOODFORD, et al., Defendants.	CASE NO. C 01-20674 (JF) NOTICE OF APPEAL MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS AFFIDAVIT IN SUPPORT OF MOTION

(Filed May 29, 2003)

Notice is hereby given that Viet M. Ngo, plaintiff in the above named case, hereby appeals to the United States Court of Appeal for the Ninth Circuit from the Order Granting Defendants' Motion to Dismiss filed in this action on May 5, 2003.

Plaintiff Viet Mike Ngo also moves for permission to appeal in Formal Pauperis because he is incarcerated without means to advance this appeal without proceeding in forma pauperis.

/s/ V. M. Ngo
Viet Mike Ngo
In Pro Per
E-21895
Avenal State Prison

AFFIDAVIT OF VIET MIKE NGO

I, Viet Mike Ngo declare as follows:

1. I am the plaintiff in this matter.

2. I am housed at Avenal State Prison. I have a scheduled court appearance in Marin County Superior Court on June 23, 2003 before Judge Dufficy, Case No. 020462).

   I also have an evidentiary hearing scheduled before Judge Adams in Marin County Superior Court in July.

   I have not been advised when I will be transported for these Court dates.

3. When I am on Out to Court status I do not have access to all my legal property or to a law library.

4. I do not have the means to appeal the Order Granting Defendants' Motion to Dismiss unless I be permitted to proceed in forma pauperis and request that the appeal be heard based on the original record without reproducing any part.

5. My issue on appeal is that irregularities in the administrative process itself prohibited me from exhausting my administrative remedies. The San Quentin Appeals Coordinator interfered with my pursuit of relief.

I reasonably and in good-faith attempted to pursue my appeals. the Appeals Coordinator improperly and incorrectly rejected two appeals I submitted on each of the claims in my case stating I had not filed my appeal in time.

I maintain that my appeals were timely filed and improperly rejected. I also maintain that I am unable to file the appeal to the next level of review once it is screened out by the appeals coordinator. Accordingly, there was not another level of administrative review available to me.

I claim that the Court did not establish the availability of an administrative remedy from a legally sufficient source before dismissing my complaint (See **Snider v. Melindez 199 F. 3d 108 (2nd Cir 1999)**

6. I have completed a Prisoner's In Formal Pauperis application and am submitting it with this affidavit and Notice of Appeal. In order to timely file my Notice of Appeal I require additional time in which to forward a Certificate of Funds In Prisoner's Account from Avenal State Prison.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of May, 2003 at Avenal, California.

/s/ V. M. Ngo
Viet Mike Ngo
In Pro Per